SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 153

CITIES SERVICE GAS COMPANY,
Appellant,

vs.

PEERLESS OIL AND GAS COMPANY, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT AS TO JURISDICTION

GLENN W. CLARK,
R. E. CULLISON,
JOE ROLSTON, JR.,
ROBERT R. MCCRACKEN,
Counsel for Appellant.

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STATUTES CITED

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32,994

CITIES SERVICE GAS COMPANY, A CORPORATION,
Plaintiff-in-Error,

vs.

PEERLESS OIL AND GAS COMPANY, A CORPORATION, THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, THE STATE OF OKLAHOMA ON RELATION OF THE COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA, AND TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION,
Defendants-in-Error;

PHILLIPS PETROLEUM COMPANY, a CORPORATION,
Defendant and Cross-Petitioner-in-Error

JURISDICTIONAL STATEMENT

Filed in Supreme Court of Oklahoma, May 19, 1950. Andy Payne, Clerk

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Pursuant to the provisions of subsisting Rule No. 12 of the Supreme Court of the United States, Cities Service Gas Company, a corporation, as Appellant, files this its separate statement particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the final

judgment, decree and decision of the Supreme Court of Oklahoma in the above-captioned cause, the highest court of the State of Oklahoma in which a decision could be had.

I

Basis upon Which It Is Contended That the United States Supreme Court Has Jurisdiction

The final judgment, decree and decision of the Supreme Court of Oklahoma upheld as valid two separate gas price-fixing orders of the Corporation Commission of the State of Oklahoma limited solely to the Guymon-Hugoton Gas Field in Texas County, Oklahoma and certain specified statutes of the State of Oklahoma upon which said Supreme Court decided each of said respective gas price-fixing orders was authorized and based, denying thereby the specific and timely contention of Appellant that each of said statutes and each of said orders, as construed and applied to Appellant and its operations as a natural gas company and a producer and purchaser of gas in said field under the undisputed and indisputable evidence in the record, were repugnant to, violated and contravened the due process, equal protection and commerce clauses of the Federal Constitution.

II

Statutory Provisions Believed to Sustain Jurisdiction

The statutory provision vesting the Supreme Court of the United States with jurisdiction of this appeal is Sec. 1257 of Tit. 28, United States Code Revised, the material parts thereof which provide:

> "Final Judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . . . .

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity."

III

The State Statutes and the Orders of the Corporation Commission of the State of Oklahoma Issued Thereunder, the Validity of Which Is Involved.

Order 19514 of the Corporation Commission of the State of Oklahoma, the validity of which has been sustained and affirmed by the final judgment, decree and decision of the Supreme Court of the State of Oklahoma as not being repugnant to the Constitution of the United States, is based upon and was issued, as decided by said Court, pursuant to delegated legislative power granted said Commission by virtue of 52 O. S. 1941, 239. Said Order 19514, omitting caption, formal parts, and findings of Commission, reads:

"ORDER

"It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

"1. That no natural gas shall be taken out of the producing structures or formation in the Guymon Hugoton field in Texas County, Oklahoma, at a price at the well-head, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"2. This order shall be effective as of January 1st, 1947."

Said statute 52 O. S. 1941, 239 reads:

"§ 239. Common source of supply—Excess gas supply—Apportionment and regulation to prevent waste.—Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or cor-

poration, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Laws 1915, ch. 197, § 4."

Order 19515 of the Corporation Commission of the State of Oklahoma, the validity of which has been sustained and affirmed by the final judgment, decree and decision of the Supreme Court of the State of Oklahoma as not being repugnant to the Constitution of the United States, is based upon and was issued, as decided by said Court, pursuant to delegated power granted said Commission by virtue of 52 O. S. 1941, 233. Said Order 19515, omitting caption, formal parts and findings of the Commission, reads:

"ORDER

"It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

"1. That the respondent, Cities Service Gas Company, be and it is hereby required to take natural gas

ratably from applicant's well located in Section 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

"2. That the respondent, Cities Service Gas Company, be and it is hereby required to take natural gas ratably from applicant's well located in Section 5, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

"3. That respondent shall pay to applicant for the natural gas so taken not less than 7¢ per thousand cubic feet of natural gas at the well head, measured at a pressure of 14.65 pounds absolute pressure per square inch.

"4. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, for a price, at the wellhead, of less than 7½¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"5. This order shall be effective as of January 1st, 1947."

Said statute 52 O. S. 1941, 233, reads:

"§ 233. Sale of gas—Prices and amounts of gas to be taken—Delivery.—Any person, firm or corporation, taking gas from a gas field, except for purpose of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that

each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. Laws 1913, ch. 198, p. 440, § 3."

In order that the Supreme Court of the United States may have a clearer picture of the case, Appellant appends to this Jurisdictional Statement a full, true, and complete copy, including findings of Commission, of each of said Orders 19514 and 19515, as well as a full, true and complete copy of Chap. 197, Laws of 1915, which comprises 52 O. S. 1941 Sections 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, and 247, and Chap. 198, Laws of 1913, which comprises 52 O. S. 1941, Sections 231, 232, 233, 234, and 235.

IV

Date of Judgment and Date of Application for Appeal Therefrom

The judgment, decree and decision herein appealed from was entered on the 17th day of January, 1950, (not yet officially reported), copy of which, together with dissenting opinions, is appended hereto.* Finality thereof was stayed by Appellant's timely filing within the time prescribed by Order of the Court and on February 18, 1950, of its Petition for Rehearing, which was denied, without opinion, by the Supreme Court of Oklahoma on March 21, 1950. Appellant's Petition for Appeal was presented and said appeal was allowed on May 19, 1950, within 90 days after the entry of such judgment, decree and decision sought to be reviewed and, hence, timely. (Sec. 2101, Tit. 28. United States Code, Revised).

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* (CLERK'S NOTE.—The opinions are printed as appendices to the Statement as to Jurisdiction in *Phillips Petroleum Co.* v. *Oklahoma*, No. 73, October Term, 1950 and are not reprinted here.)

V

Nature of Case and the Rulings of the Oklahoma Supreme Court Bringing Case Within the Jurisdictional Provisions Relied On.

The proceedings before the Corporation Commission of the State of Oklahoma, hereinafter for convenience called "Commission," that gave rise to the issuance of said Orders 19514 and 19515 originated with the filing of a twofold application by Appellee Peerless Oil and Gas Company, a producer of gas in the Guymon-Hugoton Field in Texas County, Oklahoma, hereinafter for convenience called "Peerless," against Appellant Cities Service Gas Company, a producer and purchaser of gas in said field and also a natural gas company (15 U. S. C. A. 717), owning and operating an interstate gas pipe line system, hereinafter for convenience called "Cities Service," requesting said Commission (a) to order Cities Service to make a connection with and purchase natural gas from a certain well of Peerless in said field at a price and upon terms to be fixed by said Commission and (b) to fix the price to be paid by all purchasers of natural gas generally in said field. Said application also alleged a written tender of gas from the Peerless well to Cities Service at a price of 6¢ per thousand cubic feet prior to the filing of the Peerless application. It was also alleged that "10¢ per thousand cubic feet of natural gas measured at atmospheric pressure is a reasonable price for natural gas in said field and that by fixing the price and measurement base for gas as alleged, said Commission would prevent waste of natural gas, conserve natural gas, and prevent use of natural gas for inferior purposes." The Peerless application further stated that Cities Service had signified its willingness to take the natural gas produced from its said well ratably with

natural gas taken from wells owned and operated by Cities Service and other wells in the field, but a dispute had arisen between Peerless and Cities Service as to the price to be paid for the natural gas so to be produced from the Peerless well.

Cities Service, by written answer, joined issues with the Peerless application, among other things, denying the jurisdiction and authority of Commission to grant Peerless the relief requested, because, inter alia, the granting of such relief would contravene the due process, equal protection, and commerce clauses of the Federal Constitution. Cities Service voluntarily offered to take and purchase gas from the Peerless well at the going price for natural gas in said field in harmony with subsisting orders of said Commission and in accordance with existing Oklahoma laws. Prior to trial and also as a part of its written answer Cities Service objected to a joint hearing of the judicial and legislative requests of Peerless, alleging that request of Peerless to fix the price and other terms of purchase concerning the purported dispute between it and Cities Service was judicial in character and required a private adversary hearing (*Prentis* v. *Atlantic Coastline Co.*, 211 U. S. 210, 53 L. Ed. 150) and that the request of Peerless to fix the price to be paid by all purchasers of natural gas in said field was legislative in character and required a public hearing (*Prentis* v. *Atlantic Coastline Co.*) and further alleged that the joining in one application and the granting by Commission of a joint hearing of legislative and judicial relief was contrary to the due process clause of the Federal Constitution and prejudicial to the rights of Cities Service in that it would not be accorded a fair opportunity to be heard, present its evidence and defenses and be given a fair, just and impartial hearing as required by law, which objection and request were overruled and denied by Commission. Cities

Service also, prior to trial, filed written motion requesting Commission in advance of its hearing of the Peerless application to inform it, in view of the specific recitations set forth in said motion, what rules of practice and procedure would be applied by Commission at the hearing of the Peerless application, which motion was denied.

After commencement of the hearing and trial between Peerless and Cities Service and during the course thereof, Commission in executive session at an ex parte hearing, by written order, granted the application of the State of Oklahoma on Relation of the Commissioners of the Land Office of the State of Oklahoma, hereinafter for convenience called "Land Office," to intervene in said cause and file petition in intervention therein requesting Commission to fix the price of gas in said field as in the sands and in the common reservoir before being removed, all of which was done without notice to Cities Service or an opportunity to it to oppose the granting of said application and the filing of said petition in intervention. Thereafter said Commission, by written notice, invited all producers and purchasers of gas in the field to appear and participate on a designated date, in a hearing upon the petition in intervention filed in said cause by Land Office and on said date proceeded to a hearing upon said petition in intervention, and at the same time and as a part thereof resumed the hearing between Peerless and Cities Service and allowed Land Office to actively participate in the trial of the combined judicial and legislative issues presented by the pleadings by permitting Land Office to introduce evidence, examine and cross-examine witnesses and made objections and legal arguments.

While the trial was in progress and evidence of Peerless was being received, said Commission allowed certain royalty owners, through their spokesman, to give testi-

mony, present a petition and make a speech to Commission without designating to what phase of the case it pertained. A plebiscite was conducted by said Commission and a great number of royalty owners present in the court room were polled as to the signing of said petition presented by their said spokesman and the desires of each royalty owner to increase the price of natural gas in said field. The Conservation Attorney of the Commission was permitted to participate actively in the hearing of said combined judicial and legislative cause by offering exhibits, advising Commission on the law and inquiring of and cross-examining witnesses, all of the aforesaid being done and permitted by Commission over objection of Cities Service. While the proceedings in said cause were still pending and undetermined, the Commission, through its Conservation Attorney, filed petitions in causes pending before the Federal Power Commission stating, among other things, that said Oklahoma Commission was materially interested in price paid for natural gas and interested in securing a greater purchase price for natural gas at the wellhead in said field. While the trial was still in progress and prior to the time Peerless rested its case, Peerless and Cities Service entered into a voluntary written stipulation for the ratable taking and purchasing of gas by Cities Service from two wells of Peerless in said field, including the well upon which its application to said Commission was based, at the price of 4½¢ per MCF delivered by Peerless into the pipe line system of Cities Service such payment to be without prejudice to a final determination of measurement and price then pending before said Commission in said cause.

At the time of the tender of gas from the Peerless well to Cities Service for purchase at 6¢ per MCF and at the time of the hearing of the Peerless application there was in full force and effect subsisting order 17867 of said Commission

governing said gas field which required that before a producer in said field was entitled to an allowance and to produce gas from its well it shall tender its gas production to a purchaser of gas, by registered mail, "at the going price in the field." The Supreme Court of Oklahoma has construed said subsisting order, — Okla. —, 200 P. 2d 758, (not yet officially reported), holding in the opinion that in order to have its acreage considered or held to be producing acreage, a producer was required to show by its tenders that it was in good faith willing to sell the gas from its wells at the going price in the field and that "going price has been held to be substantially the same as market price or current price." Said subsisting Commission order also required all purchasers, takers and producers of gas in the pool to comply with the common purchaser and ratable taking provisions of the Oklahoma statutes "by the equitable purchasing, producing and taking of all the gas without discrimination in favor of one producer as against another producer." There was also at said times in full force and effect Revised Maximum Price Regulation No. 436, promulgated under authority of the Federal Emergency Maximum Price Control Act of 1942, as amended, (50 U. S. C. A. 901 *et seq.*), making it unlawful for any person to sell or deliver or pay or receive in the course of trade or business any natural gas at prices higher than the maximum price fixed by said Regulation and providing further that no person "shall agree, offer or attempt to do any of these things." The undisputed evidence showed that the going or prevailing price of wellhead gas sold to pipe line companies in the Hugoton Field, Texas County, Oklahoma, under said subsisting Maximum Price Regulation 436, was 4¢ per MCF. The undisputed evidence in the record shows that during all the times material and at issue herein the going price, market price, or weighted average price for natural gas in said field was not in excess

of 4⅛¢ per MCF if sold at the wellhead and not in excess of 4½¢ per MCF if sold on pipe line delivery in said field. The undisputed evidence in the record further showed no waste of gas in said field as defined or contemplated by the Oklahoma statutes was being committed or imminent; that correlative rights of producers, landowners and royalty owners in or to gas, as such, were and are being protected and conservation of natural gas was and is being had in said field in accordance with existing Oklahoma statutes and subsisting orders of said Commission. The undisputed evidence in the record further shows that Cities Service was a substantial producer and purchaser of natural gas in said field; that 90% of all gas produced in said field and practically all of the gas produced and purchased in said field by Cities Service is immediately, without interruption, transported and sold in interstate commerce; that Cities Service was purchasing gas in said field under subsisting written gas purchase contracts which required the producer to produce and gather the gas and deliver the same, after being produced and gathered, to the pipeline system of Cities Service in said field at a price of 4½¢ per MCF, the ½¢ being for gathering, transporting and delivering of such gas. The undisputed evidence in the record discloses no facts which present a sound or substantial basis for limiting any price-fixing orders, if authorized, solely to the Guymon-Hugoton Gas Field to the exclusion of other Oklahoma gas fields.

The only issues as shown by the pleadings properly before the Commission at the combined hearing of the various applications were (a) the right of said Commission to fix a price for gas and, if it possessed that right, the price Cities Service should pay Peerless for the gas it voluntarily offered to take by purchase from the well of Peerless and (b) the right of said Commission to fix a price for gas and, if it possessed that right, the price that should be paid by all purchasers of gas in said field.

Said Commission on December 9, 1946, issued, simultaneously the two price-fixing orders in question, making both effective January 1, 1947. It is noted that said Commission in place of fixing the field price for purchased gas as requested by Peerless, if it possessed that right, attempted by its said order 19514 to fix the price at which gas could be produced in said field.

Cities Service within 60 days from the issuance of said order and well within the six months' period allowed by law for appeal to the Supreme Court of Oklahoma duly and timely appealed to said Court and by proper petition in error questioned the validity of each of said orders upon grounds including, among others, that each of said statutes and each of said orders as applied to Appellant violated the due process, equal protection, and commerce clauses of the Federal Constitution.

The Supreme Court of Oklahoma in its opinion and decision sets forth verbatim all of the legal propositions and specifications of error presented by Cities Service and decided that neither of said orders 19514 nor 19515 and neither of said statutes 52 O. S. 1941, 239, nor 52 O. S. 1941, 233, as construed and applied to Appellant by said Commission and the decision of the Supreme Court of Oklahoma, under the undisputed and indisputable evidence in the record, violated or contravened the due process, equal protection and commerce clauses of the United States Constitution and that each of said orders and the findings of the Commission therein were supported by substantial evidence and no errors of law was committed.

Specific excerpts from the record, pleadings, assignment of errors to the Oklahoma Supreme Court and the opinion and decision of said Court clearly demonstrating the appellate jurisdiction of the United States Supreme Court under Sec. 2101, Tit. 28, U. S. Code Revised, are hereinafter

quoted under subdivision VII of this Jurisdictional Statement.

VI

Stage in the Proceedings Before State Commission and in the Supreme Court of Oklahoma at Which and the Manner in Which Federal Questions Were Raised.

Appellant Cities Service Gas Company first raised the Federal issues and questions here involved by specific averments in its answer filed before the Oklahoma Corporation Commission and also in its demurrers, motions to dismiss, and motions for judgment and new trial filed with that body. Upon appeal to the Supreme Court of Oklahoma from said Commission's orders, Appellant in its specifications of error and legal propositions, which said Court copied verbatim in its opinion, assigned as error that said statutes 52 O. S. 1941, 239 and 233, and said orders 19514 and 19515 of Commission as construed and applied by the Commission were repugnant to and violated the due process, equal protection and commerce clauses of the Federal Constitution. After the Supreme Court of Oklahoma had decided said case and entered its judgment, decree and decision therein, Appellant renewed such assignment of errors in its petition for rehearing, specifically calling the attention of the Supreme Court to its contentions that said orders and said statutes as applied to the operations of Appellant violated and contravened said due process, equal protection and commerce clauses of the Federal Constitution. Such Federal issues were also expressly raised and discussed in Appellant's original and reply briefs to the Oklahoma Supreme Court and in its oral argument to that Court. Specific quotations from each of the foregoing documents showing precisely when and at what length Appellant raised the Federal issues before said Commission and before the Oklahoma

Supreme Court are given under subdivision VII of this statement.

VII

Manner and Way in Which Federal Questions Involved Were Raised and Passed upon by the Oklahoma Supreme Court and Excerpts from Record Showing Jurisdiction of the United States Supreme Court

In Appellant's Answer filed with said Commission the following, among other defenses, were interposed:

"I

"Respondent for its separate answer to that part of the application of Peerless Oil and Gas Company concerning the purported dispute between applicant and respondent over the taking and/or purchase of gas and the price and other terms of taking and/or purchase thereof, joined in this answer for convenience only, states:

* * * * * * *

"(10) For further answer and additional defense herein, respondent says that heretofore as a consequence of the national war emergency, the Congress of the United States passed the Emergency Price Control Act of January 30, 1942, same being 50 U. S. C. A. 901-946, inclusive. Under the provisions of this Act and the O. P. A. regulations promulgated pursuant thereto, which are now in full force and effect, the determination of the price of dry gas, being the kind of natural gas involved in this proceeding, has been confided to what is known as the Office of Price Administration. This functionary has issued what is known as Revised Maximum Price Regulation No. 436, and Amendments thereto, relating to and including natural gas and placing a maximum price upon the seller of gas in or from a gas field such as involved in this proceeding, and the attempt of applicant, as outlined in

this proceeding, and the attempt of applicant, as outlined in its said application, to procure an order from this Commission for respondent to take and/or purchase gas from applicant and pay applicant therefor the amount designated in its said application is in direct violation of said regulation. This Commission is without authority during the time said Emergency Price Control Act and Regulations promulgated pursuant thereto are in effect to take any action concerning the regulation of the price of dry gas as disclosed by the facts herein involved. The attempt on the part of this Commission to exercise any price-fixing power with relations to such dry gas would be entirely incompatible with the duties and powers of the Office of Price Administration under the Federal laws, since Congress has fully occupied this field by legal and constitutional authority and is fully exercising its powers with reference to the same. In addition thereto, and since in this particular instance the transaction and sale involved are one in interstate commerce and the transportation of natural gas in interstate commerce, any orders this Commission would make relating to, concerning, or regulating the price of dry gas or the terms of the contract for the sale or transportation thereof would be invalid and nugatory. In this connection, Paragraph 2 of Article VI of the Constitution of the United States, in part, provides:

"'This Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding;'

"(11) For further answer and additional defense herein, respondent says that this case presents for consideration the following Statutes and Orders of the Commission, namely; Chapter 198 of the Laws of 1913, being 52 O. S. 1941, 231 to 235, inclusive; Chapter 99, Laws of 1913, being 52 O. S. 1941, 25 to 35, inclusive; Chapter 197, Laws of 1915, being 52 O. S. 1941, 236 to

247, inclusive, and Order No. 17867 of this Commission governing the Guymon-Hugoton Field.

"(a) Respondent alleges that Chapter 198 of the Laws of 1913 above referred to, in so far as the same attempts to confer upon this Commission authority to fix the price of gas and/or other terms of purchase or taking in the purported dispute between applicant and respondent, is unconstitutional and invalid, and contravenes Article IV and Section I of Article V of the Constitution of the State of Oklahoma, and is an unlawful delegation of legislative power to the Commission in that:

"(1) the Act prescribes no policy for the Commission to follow in fixing the price of gas and/or other terms of purchase or taking;

"(2) prescribes no standard, guide or rule for the Commission to follow in fixing the price of gas and/or other terms of purchase or taking, and

"(3) in effect, reposes an absolute, unregulated and undefined discretion in this Commission which amounts to a bestowal of arbitrary powers.

"(12) For further answer and additional defense herein, respondent says that, notwithstanding any of the statutes of Oklahoma or the rules and regulations of this Commission heretofore referred to, the attempt by this Commission to fix the price of gas or other terms of purchase and/or taking, or to grant the relief requested by Peerless Oil and Gas Company as set forth in its application would:

"(a) take respondent's property without due process of law;

* * * * * * *

"(e) deny respondent the equal protection of the laws;

"(f) deny respondent the enjoyment of the gains of its own industry;

* * * * * * *

"(l) unlawfully delegate legislative power to this Commission to write a special contract for private parties by fixing the price and other terms of purchase and/or taking of natural gas;

"(m) authorize this Commission in the same proceeding to exercise legislative and judicial power;

"(n) unlawfully authorize this Commission, without the promulgation of general rules, to regulate and fix the term, conditions, details, price, times of payment, quality of gas, excuses for non-performance, interruptability clauses, features protective against monetary standard, or general commodity index changes, minimums, maximums, dehydration, and other similar or dissimilar details and elements of a contract between private parties;.

and in contravention of the following provisions of the Constitution of the United States * * *, namely:

"The 14th Amendment, Constitution of the United States, that part reading as follows:

"'No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

"Section 8, Article 1, United States Constitution, reading in part as follows:

"'The Congress shall have power * * * to regulate commerce * * * among the several states.'

"II

"Respondent for its separate answer to that part of the application of Peerless Oil and Gas Company requesting this Commission to fix the price of gas generally for all purchasers in the Guymon-Hugoton field, joined herein for convenience only, among other things and without waiving any other defenses herein or ob-

jections to the jurisdiction of the Commission which it may desire later to present at the hearing and its further right to be there heard, states:

"(1) Respondent makes all applicable defenses and objections heretofore set forth in 'I' hereof a part hereof as fully and completely as if here set out at length.

* * * * * * *

"(3) That if there was any statute in the State of Oklahoma purporting to authorize this Commission or any other body to fix the price of gas generally in the Guymon-Hugoton field, the same would be invalid and unconstitutional and beyond the police power of the State.

"(4) That as to gas produced in said field for transportation and sale in interstate commerce, this Commission has no jurisdiction to fix the price thereof because:

"(a) such action on the part of the Commission would cast a burden on, impede, and impair interstate commerce in contravention to the commerce clause of the Constitution of the United States of America, namely, Clause 3, Section 8, of Article I thereof;

* * * * * * *

"(c) such action would contravene the terms and provisions of Emergency Price Control Act of 1942, 50 U. S. C. A. 901-946, and O. P. A. Regulations promulgated pursuant thereto now in full force and effect.

"III

"Further answering herein, respondent objects to a joint hearing of the requests of applicant to (a) fix the price of gas and other terms of purchase concerning the purported dispute between Peerless Oil and Gas Company and Cities Service Gas Company and (b)

fix the price to be paid by all purchasers of natural gas in the Guymon-Hugoton field, and moves for a separate hearing on each of said matters for the following reasons:

"(1) The request of applicant to fix the price of gas and other terms of purchase concerning the purported dispute between Peerless Oil and Gas Company and Cities Service Gas Company is judicial in character, which requires a private adversary hearing.

"(2) The request of applicant to fix the price to be paid by all purchasers of natural gas in the Guymon-Hugoton field is legislative in character and requires a public hearing.

"(3) The joining in one application and the granting by Commission of a joint hearing thereon of legislative and judicial relief is (a) contrary to the due process clause of the Constitution of the State of Oklahoma and the United States of America and (b) prejudicial to the rights of Cities Service Gas Company in that respondent is not accorded a fair opportunity to be heard and present its evidence and defenses and is not accorded a fair, just, and impartial hearing as required by law (Okla. Sup. Ct. Tr. 49-75).

Appellant's demurrer to the evidence in the judicial phase of the case reads:

"Comes now respondent, Cities Service Gas Company, and insofar as the legislative question relating to fixing the price of gas and other terms of purchase from the Guymon-Hugoton Pool is concerned, demurs to all evidence introduced by applicant, intervener, and other parties adverse to the interest of respondent, and moves that the application of Peerless Oil and Gas Company, intervener, and all other parties interested adverse to respondent be dismissed and denied and that respondent be granted judgment upon the pleadings and the evidence in its favor for the reason and upon

the grounds that the Commission has no legal, statutory or constitutional authority to grant the relief prayed for and/or requested, and for all other legal and constitutional reasons set forth in respondent's answer, and for misjoinder of legislative and judicial issues" (Okla. Sup. Ct. Tr. 539).

Appellant's assignment of errors and legal propositions set forth verbatim in the opinion and decision of the Supreme Court of Oklahoma, in so far as here pertinent, read:

"2. 52 O. S. 1941, § 233, purporting to authorize Commission in case of dispute to fix price and other terms for taking or purchasing natural gas as between individual parties, is unconstitutional because:

"(a) It sets forth no policy or standard to guide Commission in acting thereunder (Articles IV and V, Oklahoma Constitution);

"(b) It violates the equal protection clause of the Federal Constitution (Section 1, Article XIV U. S. Constitution); and

"(c) It violates the due process clauses of the Oklahoma and Federal Constitution (Section 7, Article II, and 14th Amendment; as well as Sections 2 and 23, Article II, Oklahoma Constitution, and Section 59, Article V, Oklahoma Constitution.).

"3. If this Court should hold Commission under existing law is either expressly or impliedly granted natural gas price-fixing powers under some conceivable circumstances, the same are unconstitutional as applied herein because:

"(a) Price fixing has no reasonable relationship to waste, protection of correlative rights, or conservation of natural resources;

"(b) It casts a burden on, impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution (Clause 3, Section 8, Article 1); and

"(c) It denies Cities due process and the equal protection of the law (14th Amendment, Oklahoma Constitution).

* * * * * * *

"(6) The orders of the Commission are void because of vagueness, indefiniteness, and uncertainty.

"(7) Commission erred in denying Cities' motions and demurrers;

* * * * * * *

"(b) Demurrer, motion to dismiss, and motion for judgment in judicial phase of the case;

"(c) Combined demurrer, motion to dismiss, and motion for judgment in the legislative phase of the case;

* * * * * * *

"(e) Motion for new trial in judicial phase of the case.

"(8) The findings and orders of Commission are not supported by substantial, competent evidence and are contrary to the undisputed evidence.

"(9) Commission failed to grant Cities a fair and impartial trial and hearing in accordance with the due process clauses of the Oklahoma and Federal Constitutions (Section 7, Article II, Bill of Rights, Oklahoma Constitution; Section 1, Article XIV, U. S. Constitution;

"(a) By refusing to inform Cities in advance of the trial of the case what rules of practice and procedure would be applied by Commission at the hearing thereof;

"(b) By allowing the misjoinder of judicial and legislative matters;

"(c) By erroneously consolidating judicial and legislative matters;

"(d) By erroneously allowing Land Office to file petition in intervention and intervene in the case;

"(e) By allowing a private citizen to make a statement and speech to the Commission during the course of the trial;

"(f) By conducting a plebiscite of land and royalty owners while case was in hearing;

"(g) By filing petitions with Federal Power Commission while trial was in progress stating Commission was interested in increasing price of natural gas;

"(h) By allowing Commission's conservation attorney to participate and take an active part in trial of private dispute between Peerless and Cities;

"(i) By admitting incompetent and hearsay evidence and testimony;

"(j) By refusing to segregate and separate the evidence of Peerless, Land Office and others at the close of their testimony so Cities could know what evidence pertained to the judicial phase of the case and what evidence pertained to the legislative phase of the case;

"(k) By Commission's refusing to recognize, apply, and abide by its own subsisting orders."

Finally, Appellant once again urged these propositions and errors upon the Supreme Court of Oklahoma in its Petition for Rehearing, wherein Appellant alleged:

"1. That this Court in deciding this case has failed to interpret the meaning and extent of said orders as applied to the operations of Cities and other purchasers and producers of gas in said Guymon-Hugoton Gas Field under the undisputed and indisputable facts in the record; that as a result the orders of Commission under this Court's opinion and decision are subject to many varying and contradictory interpretations, some of which are:

"(a) That Order No. 19514, under the opinion and decision of this Court as rendered herein is subject to

the interpretation that no natural gas shall be produced in the Guymon-Hugoton Gas Field by a producer unless such producer receives for the gas he may sell within the State of Oklahoma, whether the sale of such gas be made for delivery at the wellhead, at the pipe line of purchaser or elsewhere within the state, a price at the wellhead of not less than 7 cents per MCF measured at a pressure of 14.65 lb. absolute pressure per square inch, and that producers who were and are producing and gathering gas in said field and delivering same after production and gathering for sale under subsisting gas purchase contracts, at the pipe line of Cities or other purchasers of gas in the field, must either be paid for such gas a price at the wellhead of not less than 7 cents per MCF and upon the pressure base fixed by Commission's order or Commission can shut in said producer's wells and thereby interrupt and stop the flow of gas under said subsisting gas purchase contracts.

"That said opinion and decision of this Court is subject to the further interpretation that said order means that if a producer of gas in said field does not elect to sell his produced gas in Oklahoma he may, if he pays the production tax and his royalty owner on the basis fixed by the Commission's said order, transport such gas so produced outside the state and there sell or dispose of it at such price as such producer may determine, without further obligation under Commission's said order.

"On the other hand, said opinion and decision is subject to the interpretation that said order means that even if a producer does not sell his gas in Oklahoma but transports such gas so produced outside the state and there under subsisting contracts or new contracts sells or disposes of it, such producer must realize and receive from such sale or disposal at the wellhead of the produced gas a price of not less than 7 cents per MCF measured upon the pressure base fixed by Commission's said orders.

"Said opinion and decision is also subject to the interpretation that Order No. 19514 is only applicable to sales of gas made by a producer to a purchaser at the wellhead in said field and that it does not apply to the sales of gas where producer produces and gathers the gas and, after such production and gathering, sells and delivers such gas to the purchaser at the pipe line of purchaser in said field or elsewhere within the State of Oklahoma outside said field.

"(b) That Order No. 19515 under the opinion and decision of this Court requires Cities to take and purchase natural gas ratably from the designated wells of Peerless Oil and Gas Company, hereinafter called "Peerless," in said field but only for so long a time as it, Peerless, determines, and to pay Peerless therefor a price of not less than 7 cents per MCF for natural gas at the wellhead, measured at a pressure of 14.65 lb. absolute pressure per square inch; that at any time Peerless decides to dispose of its said gas elsewhere or to devote it to another use, it is at liberty to disconnect its said wells from Cities' pipe line system, stop the flow of gas therefrom and thereby impede and impair the service and operation of Cities' gas transportation system, Cities being required to take and purchase but Peerless not being required to deliver and sell, resulting in a unilateral and unjust arrangement lacking mutuality of obligation and therefore illegal.

"That Sec. 3, c. 198, Laws of 1913, being 52 O.S. 1941, Sec. 233, means, either when considered alone or with other statutes, that where a purchaser and a producer of gas in said Guymon-Hugoton Field or elsewhere within the State of Oklahoma have entered into a contract for the taking and purchasing of gas in said field upon such terms, including price, as the parties have theretofore agreed upon and the gas under said contract is being taken ratably, Commission has no jurisdiction or authority over either the parties or the subject matter nor the right to change or modify

the terms of said contract, including the price of gas agreed upon by the parties therein.

"That said Order 19515 under the opinion and decision of this Court is subject to the further interpretation that said order requires Cities to take gas ratably from Peerless' wells in accordance with the formula for ratable taking prescribed in Order No. 17867 of Commission, paragraph 9 of said order providing, among other things, that all purchasers of gas in the field shall comply with the common purchaser and ratable taking provisions of the Oklahoma Statutes by the equitable purchasing and taking of all gas without discrimination in favor of one producer as against another whether in price or amount; that Cities, prior to the issuance and effective date of said Order No. 19515, having entered into subsisting gas purchase contracts with producers in said field as authorized by 52 O.S. 1941, Sec. 233, upon terms, at a price, and upon a pressure base different from those fixed by Commission in its order, said Order No. 19515 requires Cities to discriminate in taking and purchasing the Peerless gas in favor of Peerless and against other producers from whom it purchases in violation of subsisting Order No. 17867 and the common purchaser statutes of Oklahoma and is therefore invalid. In this connection it is noted that Commission in its findings purporting to support said order found that Cities was a common purchaser of gas in Oklahoma. It must be conceded that the common purchaser acts of Oklahoma do not in themselves fix a price for the purchase of natural gas but only require a purchaser not to discriminate in favor of or against those from whom it purchases. If it is determined that Cities is a common purchaser of gas and Commission decides it is necessary to fix a price different from that which such common purchaser is paying under subsisting non-discriminating contracts, then Commission is required in advance of an attempt to exercise such authority, if it possesses that authority, to promulgate a general order applicable to all purchasers of gas in

the field setting forth with clarity and particularity the basic elements governing the purchase of such gas, as the common purchaser acts with respect to a change or increase in the price of gas currently being paid are not self-executing; Moore v. Vincent, 174 Okla. 339, 50 P. 2d 388; Wilcox Oil & Gas Co. v. State, 162 Okla. 89, 19 P. 2d 347; Maddox et al. v. Hunt et al. 183 Okla. 465, 83 P. 2d 553; Sec. 59, Art. V. Oklahoma Constitution. Commission in this case has promulgated no such general order. The only order Commission has promulgated with respect to increasing the price of purchased gas in said field over and above the amount currently being paid under subsisting non-discriminatory gas purchase contracts is No. 19515, which is a special order directed solely against Cities. Order No. 19514 is directed solely against producers as evidenced by plain and unambiguous language therein, notwithstanding that the application of Peerless itself expressly requested Commission to 'fix the price to be paid by all purchasers of natural gas in the Hugoton Oklahoma gas field,' and we quote the exact language of counsel, for Peerless who said, 'If the Commission please, if we hadn't asked that the price of gas in the field be fixed in this way, then we would have to tender the gas at what they say was the going price in the field, in which event we could never have gotten a price established in the field.' (R. 108)

"That by reason of the foregoing, said orders of Commission under the decision and opinion of this Court, as written, are so vague, indefinite and uncertain, so intermingle findings of fact and law and are subject to so many varying and contradictory interpretations that a producer or purchaser from a producer cannot in advance of production or purchase with clarity and particularity determine his rights, duties and obligations under said orders; that men of common and equal intelligence must and would therefore necessarily guess at the meaning thereof and differ as to the effect and application of said orders under the factual

situations reflected by the record under peril of dire penalties for an error in so guessing including, without limitation, contempt that such a situation as this violates the first essential of due process; Connally v. Gen. Constr. Co., 269 U. S. 385, 46 S. Ct. 126, 70 L. ed. 322-328; Asso. Industries v. Industrial Welfare Comm., 185 Okl. 177, 90 P. 2d 899.

"2. That the Court has overlooked, in deciding in this case that Commission Order No. 19515 is legislative in character and in upholding and sustaining same as valid and constitutional, the decision of the Supreme Court of the United States in the case of Prentis v. Atlantic Coastline Co., 211 U. S. 210, 29 S. Ct. 67, 53 L. Ed. 150, wherein that Court defined a judicial inquiry and a legislative inquiry and clearly pointed out the difference between the two inquiries and wherein that eminent jurist Justice Holmes said:

> "'A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.'

"This Court has further overlooked its own unreversed decisions wherein it has fully recognized the distinction between a judicial and legislative inquiry and accepted the definition of each as laid down by the Supreme Court of the United States in Prentis v. Atlantic Coastline Co., supra; see A. T. & S. F. Ry. Co. v. State, 23 Okl. 510, 101 P. 262; Asso. Industries v. Industrial Welfare Comm., 185 Okl. 177, 90 P. 2d 899; Skelly Oil Co. v. Corp. Comm., 183 Okl. 364, 82 P. 2d 1009; H. F. Wilcox Oil & Gas Co. v. State, 162 Okl. 89, 19 P. 2d 347; Russell v. Walker et al., 160 Okl. 145, 15 P. 2d 114; In Re County Commissioners, 22 Okl. 435, 98 P. 557. In connection with the foregoing it is the specific contention of Cities that the definition and

distinction between judicial and legislative inquiries as laid down by the Supreme Court of the United States in Prentis v. Atlantic Coastline Co., supra, with other cases of like import supporting same, are binding and conclusive on this Court in determining whether Cities has been accorded and given a fair and impartial trial or adversary hearing in accordance with the due process clause of the 14th Amendment to the United States Constitution.

"3. That in upholding, affirming and sustaining the validity and constitutionality of Commission's judicial Order No. 19515 and the statutes cited by this Court in support thereof, the Court has overlooked the provisions of Revised Maximum Price Regulation No. 436 (Cities' Ex. 80) promulgated under authority of Emergency Maximum Price Control Act of 1942, as amended, 50 U. S. C. A. 901 et seq., which act and regulation were in full force and effect at the time Peerless tendered gas from its said well or wells to Cities, as alleged and set forth in its said application, and at the time Commission commenced its hearing thereon, and in connection therewith the Court has further overlooked that at the time of such tender of gas by Peerless to Cities and at the time of the trial and hearing on said application before Commission there was in full force and effect Commission's subsisting Order No. 17867 (so recognized by Commission in its order) which provided in paragraph 4 (b) thereof that before any unconnected well shall be granted an allowable (Peerless' wells were unconnected at the time of tender) so that said well could lawfully be produced, the operator shall tender its gas production to a purchaser at the going price in the field (Application of Moran, —— Okl. ——, 200 P. 2d 758) and that the going price as determined by the Office of Price Administration under said subsisting regulation and price control act, as well as the actual going price in the field, was not in excess of 4 cents per MCF for dry wellhead gas to pipe lines in the Hugoton Field, Texas County, Oklahoma, and that

said order of Commission requiring a tender of gas by producer to the pipe line before the well is entitled to an allowable and to produce has been during all times material herein and is now in full force and effect.

* * * * * * *

"(6) That the Court has further overlooked in deciding this case that the language of the gas statutes mentioned, referred to and set forth in its said opinion upholding Order No. 19514 of Commission is not ambiguous and uncertain in meaning but is plain and concise and that by reason thereof under the well recognized rules of statutory construction there is no necessity of occasion for interpretation and this Court has no legal or constitutional authority to interpolate into the statutes language, matters and things not placed therein by the Legislature of Oklahoma; that said statutes deal with the production and conservation of gas, as gas, as a commodity and not to the price or proceeds thereof; that price is not even mentioned in any of the statutes relied upon by the Court in upholding Order 19514 and that under previous unreversed decisions of this Court neither this Court nor Commission can legally by judicial legislation read into a statute that which the Legislature has specifically omitted; Sterling Refg. Co. v. Walker, 165 Okl. 45, 25 P. 2d 312; Pannell v. Farmers Union Coop. Assn., 192 Okl. 652, 138 P. 2d 817; Wilcox Oil & Gas Co. v. Walker, 169 Okl. 33, 32 P. 2d 1044; Chicago R. I. & P. Ry. Co. v. State, 158 Okl. 57, 12 P. 2d 494; Y & Y Cab Service v. Okla. City, 157 Okl. 134, 28 P. 2d 5551; Worley v. French, 184 Okl. 116, 85 P. 2d 296; Appl. Central Airlines, Inc., 199 Okl. 300, 185 P. 2d 919; also Interstate Commerce Comm. v. Cinn. N. O. & T. P. R. Co., 167 U. S. 478, 17 S. Ct. 896-898, 42 L. Ed. 243; Sunshine Dairy v. Peterson, 193 P. 2d 543, and cases cited therein, together with other cases and decisions previously cited to the Court in Briefs heretofore filed by Cities.

* * * * * * *

"(8) The Court has overlooked in deciding this case that the testimony of experts and others in the record and referred to by the Court in its opinion and decision to the effect that 'taking gas from the field at prices of 3.6 cents to 5 cents per MCF constituted economic waste and that such prices were conducive of physical waste and that to prevent economic and physical waste the minimum price for gas in the field should be 10 cents per MCF,' and upon which in a large measure this Court bases its decision, is incompetent, irrelevant, immaterial and prejudicial to Cities and was objected and excepted to as such at the time it was received by Commission. That the Court has further overlooked in deciding this case that the undisputed and indisputable competent evidence in the record shows that no waste of gas as defined and contemplated by the Oklahoma Statutes was being committed, occurring or imminent in said field; that correlative rights of producers, landowners and royalty owners in or to gas, as gas, were and are being protected and conservation of natural gas was and is being had in said field in accordance with existing Oklahoma statutes and subsisting orders of the Corporation Commission. That the Court has further overlooked in deciding this case that economic waste is not included within the definition of waste as set forth in any of the gas statutes of the State of Oklahoma; that even if the testimony relied upon and referred to by the Court in its opinion to the effect 'that to prevent economic and physical waste the minimum price for gas in the field should be 10 cents per MCF' is competent, the order of Commission fixes a price of 7 cents and therefore if this Court is going to accept such evidence as the basis for its decision in upholding the orders to prevent waste of gas, the only logical conclusion is that Commission by fixing the price at 7 cents in the face of this testimony instead of preventing waste is permitting waste to occur and it necessarily follows that by accepting the testimony the orders as entered fixing a price of less than 10 cents have no relation to prevention of waste of gas as defined and contem-

plated by the Oklahoma Statutes. That the decree, judgment, decision and opinion of this Court, as well as the decree, judgment, decision and opinion of this Court, as well as the orders of said Commission, are contrary to the undisputed and indisputable evidence in the record which clearly reflects that the only real purpose of Commission's gas price-fixing orders was to increase the price of natural gas in order to confer special economic advantages on royalty owners and certain producers in said field and increase without legislative authority the gross production tax on gas in said field, to the great financial detriment of Cities, other gas pipe line companies operating in said field, and the gas consuming public in Oklahoma and elsewhere, and not for the purpose of preventing waste as contemplated by statute, protecting correlative rights as contemplated by statute, or protecting the public interest as contemplated by statute; that the end result is, under the undisputed and indisputable evidence in the record, a denial to Cities and other producers and purchasers of gas in the field of the equal protection of the law, due process of law, and the impairment of valid and subsisting gas purchase contracts and leases, all because the Commission thought the price of gas in said field was too cheap. In this connection attention is directed to the following cases:

"In Reagan v. Farmers Loan & Trust Co., 154 U. S. 362, 38 L. Ed. 1014, it is said, on page 1024 Law Edition:

> "The equal protection of the laws, which by the Fourteenth Amendment no state can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is without compensation wrested from him for the benefit of another, or of the public. This, as has been observed, is a government of law and not a government of men and it must never be forgotten that under such a government, with its constitutional limitations and guarantees, the forms of law and the machinery of government, with all their reach and power, must

in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held."

"See, also, Hairston v. Danville & W. R. Co., 52 L. Ed. 637; Chicago St. P. M. & O. R. Co. v. Holmbert, 282 U. S. 162, 75 L. Ed. 27; Nashville C. & St. L. R. Co. v. Walters, 294 U. S. 405, 79 L. Ed. 949; Penn. Coal Co. v. Mahon, 260 U. S. 393, 67 L. Ed. 322; Thompson v. Cons. Gas Util. Corp., 300 U. S. 55, 81 L. Ed. 510; Treigle v. Acme Homestead Assn., 297 U. S. 189, 80 L. Ed. 575; and other cases cited in Cities' briefs heretofore filed in this case.

"(9) That the Court has overlooked in deciding this case that the public interest and convenience does not justify taking one person's property and giving it to another without payment of compensation therefor or without due reciprocity of advantage; Panhandle Eastern Pipe Line Co. v. State Highway Comm., 294 U. S. 613, 79 L. Ed. 1090.

. . . . . .

"(12) That this Court has overlooked in deciding this case that an order of Commission cannot legally and constitutionally be applied retroactively or retrospectively so as to destroy or impair existing vested rights or defenses; that when Commission entertained the application of Peerless to settle a dispute between Peerless and Cities, as provided by 52 O. S. 1941, Sec. 233, and held a hearing thereon under said statute and existing facts, including current regulations covering tender of gas, it was conducting a judicial inquiry (Prentis v. Atlantic Coastline Co., supra; In Re County Commissioners, supra) and could not lawfully, after institution of the proceedings and the hearing thereon, promulgate a legislative order having the force of law and apply it retroactively or retrospectively in settling a dispute arising under a statute already in existence

and based upon past facts; Miller v. U. S., 294 U. S. 436, 79 L. Ed. 997, where it is said, on page 981:

> "'An administrative regulation is subject to the rule equally with a statute; and accordingly, the regulation here involved must be taken to operate prospectively only.'

"In this connection it should be specifically noted that according to the application of Peerless itself the only issue in dispute between Cities and Peerless was price, and Peerless has also so conceded in its brief.

"(13) That the Statutes of Oklahoma mentioned, referred to and set forth in said decree, judgment, decision and opinion of this Court, as interpreted and applied therein by the Court, as well as orders of Commission, under the undisputed and indisputable evidence and facts in the record, are repugnant to, violate and contravene the due process and equal protection clauses of and the 14th Amendment to the Constitution of the United States, the commerce clause, Sec. 8, Art. 1, United States Constitution, and the contract clause, Sec. 10, Art. 1, United States Constitution."

In determining the Federal issues adversely to Appellant's contention the Oklahoma Supreme Court held:

"4. The due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common reservoir, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet and pay the established field price for the gas so taken, such being but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

"5. The Commerce clause of the Federal Constitution does not preclude the state in the protection of local interests from fixing a uniform minimum price

consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed before the operation of interstate commerce occurs."

In the body of the Oklahoma Supreme Court's opinion the Federal issues are met in this manner:

"We think it clear that the due process and equal protection provisions of the Federal and State Constitutions do not preclude the State, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common pool, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet under such terms as the parties may agree upon; or in default of agreement, to take upon such terms and price as may be fixed by the Corporation Commission consistent with equality in returns for gas taken in the field. Such device is but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

"The Commission's order, made under the provisions of section 233, supra, directing that Cities Service as a condition of its further taking of gas from the field, should take ratably from the wells of Peerless, is readily sustainable. The portion of the order directing payment for the gas so taken at not less than 7¢ per thousand cubic feet at the wellhead rests upon the Commission's general order prohibiting the taking of gas from the producing structures or formations in the field for a price at the wellhead of less than 7¢ per thousand cubic feet.

"Such policy of the law-making body of the state is expressed in the 1915 Act. In the nature of the subject matter the Legislature was compelled to leave to another agency of the state the duty of bringing about the result pointed out by the statute. As has been noted, under Section 239, supra, the Commission is charged with the duty of regulating the taking of

gas from a common source of supply. The standard to guide the Commission in acting thereunder is the prevention of waste, the protection of the interest of the public, and the protection of the interest of all those having a right to produce from such common source of supply. There is no invalid delegation of power by reason of uncertainty in the stated criterion and the act does not confer arbitrary and uncontrolled powers. The price-fixing feature of the Commission's order is but a means of securing the purpose for which the act was passed, or is the instrumentality employed by the Commission to carry out the legislative will and it is limited in its use to the effecting of the expressed purpose. The validity of the order rests in its reasonableness and relevancy to the policy the Legislature was free to adopt.

"The testimony abundantly supports a conclusion that the conditions under which gas is being taken from the field is injurious to the interest of the public at large, and inimical to the interest of a substantial group such as landowners and others and is resulting in economic waste and conducive to physical waste. The testimony demonstrates that the price fixed as a condition of the further taking of gas from the field is reasonable and not beyond the requirements of the situation sought to be corrected, and will not result in discrimination.

"Cities Service contends the order appealed from impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution. In Interstate Natural Gas Co. v. Federal Power Commission, 67 S. Ct. 1482, 331 U.S. 682, 91 L. Ed. 1742, in a case involving the jurisdiction of the Federal Power Commission, we note this expression:

"'In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regula-

tion in areas in which the states are constitutionally competent to act. . . .' "

"Here the Corporation Commission has fixed a minimum price for gas in a natural common reservoir; such price to be applied at the wellhead as a condition of the taking. The regulation applies to the production of natural gas and though it results in an incidental effect upon the sale price for gas after the gas has been reduced to possession, the subsequent sale of gas for delivery into another state does not brand the Commission order as a regulation of interstate commerce. The regulation is imposed before any operations of interstate commerce occur. In Parker, Director of Agriculture, et al. v. Brown, 317 U. S. 341, it is said:

" '. . . No case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce.'

"We do not perceive that the commerce clause of the Federal Constitution precludes the state in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom may have contracted or will contract for sale and delivery of his share of the production outside the state, or because a purchaser from such producer will sell and transport the gas in interstate commerce.

"The general order of the Commission fixing the minimum price for gas taken from the field as a part of the order requiring Cities Service to take ratably from the Peerless wells and as applied to Cities Service has the effect of requiring Cities Service to take ratably from Peerless and pay for the gas so taken at a price equal to the minimum price it must obtain for

gas from its own wells offered at the well. If it may be said that under the price-fixing order, Cities Service with ownership of pipeline facilities, might take gas from its own wells and after payment of public charges and royalty claims on the gas on a basis of the minimum price fixed by the state, run the gas across the state line and there with profit make disposition of the gas at prices below the minimum price fixed by the state, it does not follow that it has a right to use its pipeline facilities to gather gas from other wells on such basis, in otherwise disregard of price regulations, or that it may so use its wells as to effect a drainage from others without liability having relation to the price regulation.

"We find no basis in the due process and equal protection clauses of the Federal and State Constitutions for condemning the orders in their application to Cities Service.

"Cities Service complains of certain rulings in reference to certain pleadings filed and complains of the Commission's conduct and rulings in the course of the various hearings held leading up to the promulgation of the orders here under attack.

"The orders are legislative in character and subject in a large measure to the rules and principles by which the validity of statutes are determined. In the hearings preceding the orders, and not for violation thereof, the rules and principles of procedure obtaining in the enactment of a statute more nearly apply than the strict rules applicable to law courts.

"We have examined the record and find substantial evidence to support the Commission's findings and no error of law is committed."

VIII

Grounds upon Which It Is Contended the Federal Questions Involvd Are Substantial

A mere summarization of the holding of the Supreme Court of Oklahoma should suffice to demonstrate that the

Federal issues presented by the assignment of errors in this appeal are substantial.

The Assignment of Errors in itself constitutes a statement clearly showing the grounds upon which Appellant contends the Federal questions involved are substantial, and for the convenience of the Court the Assignment of Errors are here set out at length, namely:

"ASSIGNMENT OF ERRORS

"I

"The Supreme Court of the State of Oklahoma erred in deciding that Order 19,514 and the statute 52 O. S. 1941, 239, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the undisputed and indisputable evidence in the record, did not deprive Appellant of its property without due process of law or deny to it the equal protection of the laws in contravention to the provisions of Section I of the 14th Amendment to the United States Constitution, because:

"(a) Said order 19514 as written, carrying severe penalties for violation thereof, is so vague, indefinite and uncertain, so intermingles findings of fact and law and is subject to so many varying and contradictory interpretations that a producer or a purchaser from a producer cannot in advance of production or purchase with clarity and particularity determine his rights, duties and obligations thereunder and producers and purchasers must necessarily guess at the meaning thereof and differ as to its application and effect.

"(b) Said order 19514 and the findings in support thereof are contrary to the undisputed and indisputable evidence in the record in that the record shows no waste of gas as defined or contemplated by the Oklahoma statutes was being committed or imminent in said gas field; that correlative rights

of producers, landowners and royalty owners in or to gas, as such, were and are being protected and conservation of natural gas was and is being had in said field in accordance with existing Oklahoma statutes and subsisting orders of said Commission, and by reason thereof said order and the findings in support thereof are arbitrary, discriminatory, and demonstrably irrelevant to any pertinent policy the Oklahoma Legislature is free to adopt. In connection therewith said Court should have ordered sustained Appellant's combined demurrer, motion to dismiss, and motion for judgment, on the grounds therein stated.

"(c) The record discloses no facts which present a sound or substantial basis for limiting the application of said order 19514 increasing the price of gas twofold to one gas field to the exclusion of other Oklahoma gas fields, thereby resulting in discrimination and denial of the equal protection of the law.

"(d) Said Order 19514 and said statute 52 O. S. 1941, 239, as applied by said Court take Appellant's property without compensation and give it to another without any justifying public purpose or due reciprocity of advantage therefor.

"(e) Said statute 52 O. S. 1941, 239, is not ambiguous and no justifiable reason exists authorizing said Court by implication of law or judicial fiat to arbitrarily interpolate into said statute gas price-fixing powers not placed therein by the State Legislature.

"(f) Said statute 52 O. S. 1941, 239, sets forth no standard or policy to guide said Commission in exercising any claimed price-fixing powers thereunder and, in the absence thereof, reposes in said Commission an absolute unregulated, unbridled, undefined and arbitrary discretion with respect thereto.

"II

"The Supreme Court of the State of Oklahoma erred in deciding that Order 19515 and the statute 52 O. S.

1941, 233, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the undisputed and indisputable evidence in the record, did not deprive Appellant of its property without due process of law or deny to it the equal protection of the laws in contravention to the provisions of Section 1 of the 14th Amendment to the United States Constitution because:

"(a) Said order 19515 as written, carrying severe penalties for violation thereof, is so vague, indefinite and uncertain, so intermingles findings of fact and law and is subject to so many varying and contradictory interpretations that a producer or a purchaser from a producer cannot in advance of production or purchase with clarity and particularity determine his rights, duties and obligations thereunder and purchasers and producers must necessarily guess at the meaning thereof and differ as to its application and effect.

"(b) Said order 19515 and the findings in support thereof are contrary to the undisputed and indisputable evidence in the record and in connection therewith the Court should have ordered sustained Appellant's demurrer, motion to dismiss, and motion for judgment; its motion to set aside findings of fact and conclusions of law entered by Commission and substitute therefor certain findings of fact and conclusions of law submitted by Appellant and for judgment; and its motion for new trial, all upon the grounds set forth in said instruments.

"(c) Said Commission unlawfully applied retroactively the price and measurement base fixed by its legislative order 19514 to Appellant by Order 19515 in settling said claimed judicial dispute which arose, if at all, between the parties on past facts and under a particular state statute, 52 O. S. 1941, 233, already in existence, thereby depriving Appellant of vested rights and defenses in the settlement of said purported dispute.

"(d) Said order 19515 and said statute 52 O. S. 1941, 233, as applied to Appellant by said Court require Appellant to discriminate as to price and measurement base in favor of Appellee Peerless Oil and Gas Company and against other sellers of gas in said field in that said order is a special judicial directive, leveled solely against Appellant, requiring it to pay said Appellee a price per MCF of natural gas higher than the price being currently paid by Appellant under subsisting gas purchase contracts with other sellers in the field, which said contracts are specifically authorized by 52 O. S. 1941, 233, and in addition thereto, by reason thereof, takes Appellant's property without compensation and gives it to said Appellee without any justifying public purpose or due reciprocity of advantage therefor.

"(e) Said statute 52 O. S. 1941, 233, sets forth no standard or policy to guide said Commission in acting thereunder and in effect reposes in said body an absolute unregulated, unbridled, undefined and arbitrary discretion in fixing the price and other terms for purchasing natural gas.

"III

"The Supreme Court of the State of Oklahoma erred in holding and deciding said Commission granted Appellant a fair and impartial trial and hearing in accordance with the procedural due process of the 14th Amendment, Section 1, Article XIV, U. S. Constitution:

"(a) By refusing to inform Appellant in advance of the trial of the case what rules of practice and procedure would be applied by Commission at the hearing thereof;

"(b) By allowing the misjoinder of judicial and legislative matters;

"(c) By erroneously consolidating judicial and legislative matters;

"(d) By erroneously allowing Commissioners of the Land Office to file petition in intervention and intervene in the case;

"(e) By allowing a private citizen to make a statement and speech to the Commission during the course of the trial;

"(f) By conducting a plebiscite of land and royalty owners while case was in hearing;

"(g) By filing petitions with Federal Power Commission while trial was in progress stating Commission was interested in increasing price of natural gas;

"(h) By Allowing Commission's conservation attorney to participate and take an active part in trial of private dispute between Appellee Peerless and Appellant;

"(i) By admitting incompetent and hearsay evidence and testimony and by making findings contrary to the undisputed and indisputable character of the evidence;

"(j) By refusing to segregate and separate the evidence of Appellee Peerless, Land Office and others at the close of their testimony so Appellant could know what evidence pertained to the judicial phase of the case and what evidence pertained to the legislative phase of the case;

"(k) By Commission's refusing to recognize, apply, and abide by its own subsisting orders.

"IV

"The Supreme Court of the State of Oklahoma erred in deciding that Order No. 19514 and the statute 52 O. S. 1941, 239, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the undisputed and indisputable evidence in the record, did not violate the commerce clause, Section 10, Article 1,

United States Constitution, because said order 19514 increases the going and market price of gas twofold in said field and is limited solely to one gas field to the exclusion of other gas fields in the State of Oklahoma, and 90% of all gas produced in said field and practically all of Appellant's gas is immediately, without interruption, transported and sold in interstate commerce and by reason thereof said order 19514 and said statute 52 O. S. 1941, 239, as applied, cast an undue burden upon and discriminate against interstate commerce and the interstate operations of Appellant.

"V

"The Supreme Court of the State of Oklahoma erred in deciding that Order 19515 and the statute 52 O. S. 1941, 233, upon which said Court determined said order was authorized, as construed and applied to Appellant by the decision of said Court under the undisputed and indisputable evidence in the record, did not violate the commerce clause, Section 10, Article I, United States Constitution, because said gas being taken and purchased by Appellant from said Appellee Peerless Oil and Gas Company under subsisting stipulation in effect at the time of the making of said order 19515 is immediately, without interruption, transported in interstate commerce for resale and said order, being directed solely against Appellant and increasing twofold the price of gas in said field, casts an undue burden upon and discriminates against the interstate operations and business of Appellant."

In order, however, to eliminate any question as to the substantiality of the Federal issues presented, Appellant presents the following decisions of the Supreme Court of the United States which Appellant believes unquestionably sustain its assignment of errors and furnish adequate grounds for a review of the judgment, decree and decision of the Supreme Court of Oklahoma as applied to the operations

and business of Appellant under the undisputed and indisputable evidence in the record, namely:

Connally v. *General Construction Company*, 269 U. S. 385, 70 L. Ed. 322; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 76 L. Ed. 1062; *Nashville, C. & St. L. R. Co.* v. *Walters*, 294 U. S. 405, 79 L. Ed. 949; *Reagin* v. *Farmers Loan & Trust Company*, 154 U. S. 362, 38 L. Ed. 1014; *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 67 L. Ed. 322; *Hairston* v. *Danville & W. R. Co.*, 208 U. S. 598, 52 L. Ed. 637; *Chicago St. P. M. & O. R. Co.* v. *Holmbert*, 282 U. S. 162, 75 L. Ed. 270; *Panhandle Eastern Pipe Line Co.* v. *State Highway Commission*, 294 U. S. 613, 79 L. Ed. 1090; *Treigle* v. *Acme Homestead Association*, 297 U. S. 180, 80 L. Ed. 575; *Thompson* v. *Consolidated Gas Utilities Corporation*, 300 U. S. 55, 81 L. Ed. 510; *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 68 L. Ed. 813; *Southern Railway Co.* v. *Virginia ex rel. Shirley*, 290 U. S. 190, 78 L. Ed. 260; *Kessler* v. *Strecker*, 307 U. S. 22, 83 L. Ed. 1082; *Morgan* v. *U. S.*, 304 U. S. 1, 82 L. Ed. 1129; *U. S.* v. *Rock Royal Co-Operative, Inc.*, 307 U. S. 533, 59 S. Ct. 993, 83 L. Ed. 1446; *Currin* v. *Wallace*, 306 U. S. 1, 59 S. Ct. 379, 83 L. Ed. 441; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 42 S. Ct. 106, 66 L. Ed. 239; *Lempke* v. *Farmers Grain Co.*, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 457; *West* v. *Kansas Natural Gas Co.*, 221 U. S. 229, 55 L. Ed. 716; *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189, 45 S. Ct. 481, 60 L. Ed. 909; *Baldwin* v. *Seelig*, 294 U. S. 511, 79 L. Ed. 1032; *H. P. Hood & Sons* v. *DuMond*, 336 U. S. 657, 93 L. Ed. 682; *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 683, 91 L. Ed.

1743; *A. L. A. Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 79 L. Ed. 1570; *Prentis* v. *Atlantic Coastline Company*, 211 U. S. 210, 53 L. Ed. 150, and Interstate Compact to Conserve Oil and Gas executed by Oklahoma and other states and consented to by Congress by Joint Resolution of August 27, 1935, c. 981, 49 Stat. 939-941.

IX

Cases Sustaining Jurisdiction of United States Supreme Court

(a) The appeal having been perfected within ninety days from date on which the judgment of the Oklahoma Supreme Court became final is timely (Sec. 2101, Tit. 28, U. S. Code Revised).

(b) Appeal is the proper remedy for review of a decision of a state court of last resort in favor of the validity of state statutes and of administrative orders issued pursuant to legislative authority claimed to be delegated by such statutes where the statutes and the orders thereunder issued are alleged to contravene the Federal Constitution (Sec. 1257, Tit. 28, U. S. Code Revised).

Hamilton v. *Regents of the University of California*, 293 U. S. 245, 79 L. Ed. 343; *Charleston Federal Savings & Loan Association* v. *Alderson*, 324 U. S. 182, 89 L. Ed. 857; *Market Street Railroad Co.* v. *Railroad Commission of California*, 324 U. S. 548, 89 L. Ed. 1171; *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 85 L. Ed. 836; *Postal Teleg. Cable Company* v. *Newport*, 247 U. S. 464, 62 L. Ed. 1215; *Sterling* v. *Constantin*, 287 U. S. 387, 77 L. Ed. 375; *Pollock* v. *Williams*, 322 U. S. 4, 88 L. Ed. 1095; *Williams* v. *North Carolina*, 325 U. S.

226, 89 L. Ed. 1577; *Hoover & A. Company*, v. *Evatt*, 324 U. S. 652, 89 L. Ed. 1252; *United Gas Public Service Co.* v. *Texas*, 303 U. S. 123, 82 L. Ed. 702; *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, 86 L. Ed. 1090; *Broad River Power Company* v. *South Carolina*, 281 U. S. 537, 74 L. Ed. 1023; *Greenough* v. *Tax Assessor*, 331 U. S. 486, 91 L. Ed. 1621, 1630.

X

Copies of All Opinions Delivered in Connection With the Judgment Sought to Be Reviewed

Appellant appends to this Jurisdictional Statement Copies of Orders 19514 and 19515 in Cause C. D. 1054 before the Corporation Commission of Oklahoma (Appendix "A & B")* and copy of pertinent Oklahoma laws involved (Appendix "C") as well as copy of the Judgment, Decree and Decision of the Supreme Court of Oklahoma consisting of the majority opinion of the Court filed January 17, 1950, and dissenting opinions filed by Halley, J; and Gibson, J. (Appendix "D").* The Order Sheet of the Supreme Court dated March 21, 1950 contains the following statement:

> "The Clerk is hereby directed to enter the following Orders:
>
> "32,994—Cities Service Gas Company, a Corporation v. Peerless Oil & Gas Company, a Corporation, et al.
>
> "33,006—Phillips Petroleum Company, a corporation v. State of Oklahoma, et al.
>
> "Petitions for Rehearing and Oral Argument in the above consolidated causes denied."

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* (CLERK'S NOTE.—The Orders and Opinions appear as appendices to the Statement as to Jurisdiction in *Phillips Petroleum Co.* v. *Oklahoma*, No. 73, October Term, 1950 and are not reprinted here.)

WHEREFORE, it is respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal under Section 1257, Title 28, United States Code Revised.

Dated this 19 day of May, 1950.

GLENN W. CLARK,
R. E. CULLISON,
JOE ROLSTON, JR.,
ROBERT R. MCCRACKEN,
First National Building,
Oklahoma City, Oklahoma,
Attorneys for Appellant,
Cities Service Gas Company.

APPENDIX C

Chapter 198, Laws of Oklahoma 1913, which comprises 52 O. S. 1941, Sections 231 to 235 inclusive, reads:

"§ 231. Ownership of gas.—All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state. Laws 1913, ch. 198, p. 439, § 1.

"§ 232. Drilling rights.—Restrictions on output.—Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. If such other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well. Laws 1913, ch. 198, p. 440, § 2.

"§ 233. Sale of gas.—Prices and amounts of gas to be taken—Delivery.—Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and

upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. Laws 1913, ch. 198, p. 440, § 3.

"§ 234. Misappropriation of gas.—Liability for damages and penalties.—Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act, shall be liable to any adjoining well owner for all damage sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars ($500.00), each day such violation is continued shall be a separate offense. Laws 1913, ch. 198, p. 441, § 4.

"§ 235. Misappropriation of gas.—Criminal responsibility.—Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent, or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years. Laws 1913, ch. 198, p. 441, § 5."

Chapter 197, Laws of Oklahoma 1915, which comprises 52 O.S. 1941, Sections 236 to 247, inclusive, reads:

"§ 236. Waste prohibited.—The production of natural gas in the State of Oklahoma, in such manner, and under such conditions as to constitute waste, shall be unlawful. Laws 1915, ch. 197, § 1.

"§ 237. Waste defined.—The term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas. Laws 1915, ch. 197, § 2.

"§ 238. Conservation of gas—Whenever natural gas in commercial quantities, or a gas bearing stratum,

known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours shall be considered a commercial quantity thereof; provided, that if in the opinion of the Corporation Commission, gas of a lesser quantity shall be of commercial value, said Commission shall have authority to require the conservation of said gas in accordance with the provisions of this act; and provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days. Laws 1915, ch. 197, §3.

"§ 239. Common source of supply.—Excess gas supply—Apportionment and regulation to prevent waste.—Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to

prevent waste protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Laws 1915, ch. 197, § 4.

"§ 240. 'Common purchaser'—Discrimination in purchases prohibited—Regulation of purchases.—Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; But if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. Laws 1915, ch. 197, § 5.

"§ 241. Enforcement of Act—Hearings before Corporation Commission.—Any person, firm or corporation, or the Attorney General, on behalf of the state

may institute proceedings before the Corporation Commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act; and jurisdiction is hereby conferred upon said commission to hear and determine the same, said commission shall set a time and place when such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having general circulation in the state, and shall in addition thereto cause notice to be served in writing upon any person, firm or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction said commission is authorized to summon witnesses, make ancillary orders, and use such mesne and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations as now provided by law. Laws 1915, ch. 197, § 6.

"§ 242. Appeals to Supreme Court.—Appellate jurisdiction is hereby conferred upon the Supreme Court of this state to review the orders of said commission made under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from, may be superseded by the commission or by the Supreme Court upon such terms and conditions as may be just and equitable. Laws 1915, ch. 197, § 7.

"§ 243. Corporation Commission—Authority to make rules and regulations.—The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of

the Governor, as may be necessary to enforce this act. Laws 1915, ch. 197, § 8.

"§ 244. Pipe line companies—Acceptance of act as prerequisite to right to operate.—Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm or corporation, shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this act. Laws 1915, ch. 197, § 9.

"§ 245. Mine Inspector—Duties unchanged.—Nothing contained in this act shall be construed to interfere with any duties now imposed by law upon the Chief Mine Inspector of the state or his deputies. Laws 1915, ch. 197, § 10.

"§ 246. Partial invalidity—Effect.—The invalidity of any section, subdivision, clause, or sentence of this act shall not in any manner affect the validity of the remaining portion thereof. Laws 1915, ch. 197, § 11.

"§ 247. Violation—Penalties.—In addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment. Laws 1915, ch. 197, § 12.